

WHITE STAR FOUNDATION, INC.

IBLA 79-320

Decided May 29, 1980

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring void mining claims OR MC 898, OR MC 939, OR MC 940, and OR MC 1280.

Affirmed.

1. Federal Land Policy and Management Act of 1976:  
Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

APPEARANCES: Donald R. Laird, Esq., Johnson, Harrang & Mercer, Eugene, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

White Star Foundation, Inc., appeals from a March 23, 1979, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring appellant's mining claims abandoned and void 1/ under the

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1/ Appellant's mining claims are Calamity Jane (OR MC 939), Wild Bill (OR MC 940), Titus (OR MC 898), and Indian Head No. 1 (OR MC 1280).

Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976); 43 CFR 3833.2-1 and 3833.4.

The claims were originally located in 1977, and were duly recorded with BLM in 1977. Subsequently, the owners formed White Star Foundation, Inc., and transferred their interests in the claims to the corporation. July 28, 1979, appellant submitted to BLM a notice of transfer of interest pursuant to 43 CFR 3833.3. No affidavits of 1978 assessment work or notices of intention to hold were received by BLM on or before December 31, 1978, as required by 43 CFR 3833.2-1. BLM notified appellant that failure to file the assessment or notice instruments within the prescribed time period constituted an abandonment of the mining claims and that the mining claims were void.

Appellant states that it

was under the assumption that since the claims were located by the original transferors prior to October 21, 1976, [2/] that as far as the corporation was involved, it did not have claims located until during the calendar year 1978, which meant that it had until December 31, 1979, to file the assessment information.

Appellant apparently contends that the notice to transfer interest in July 1978 acted as a new location notice for appellant as the new owner of the mining claims.

Under 43 U.S.C. § 1744 (1976), the Congressional mandate is clear:

§ 1744. Recordation of mining claims -- Filing requirements

\* \* \* The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of Title 30, relating thereto.

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2/ As stated above, the claims were actually located in 1977.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

\* \* \* \* \*

Failure to file as constituting abandonment;  
defective or untimely filing

(c) The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

The claims were located in 1977 by the original owners not prior to October 21, 1976, as appellant now contends. As assignee, appellant stands in the same position as the assignors. The claims were located only once. Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the claims must be declared abandoned.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joseph W. Goss  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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James L. Burski  
Administrative Judge

